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PART II — Section 2

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bill was introduced in the Lok Sabha on 16th December, 2005:—

BILL NO. 162 OF 2005

A Bill further to amend the Securities Contracts (Regulation) Act, 1956.

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

1. This Act may be called the Securities Contracts (Regulation) Amendment Act, 2005. Short title.

42 of 1956.

2. In section 2 of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as the principal Act), in clause (h), after sub-clause (id), the following sub-clause shall be inserted, namely:—

Amendment of section 2.

“(ie) any certificate or instrument (by whatever name called),—

(a) issued, to an investor by any special purpose distinct entity which possesses any financial asset representing debt or receivable by such entity, and, acknowledging the beneficial interest of such investor in such financial asset; and

(b) which may, by general or special order, be specified as such by the Securities and Exchange Board of India;”.

Insertion of
new section
17A.

Approval of
Securities and
Exchange
Board of India
for securities
referred to in
sub-clause (ie)
of clause (h) of
section 2.

3. After section 17 of the principal Act, the following section shall be inserted, namely:—

“17A. (1) Without prejudice to the provisions contained in this Act or any other law for the time being in force, no securities of the nature referred to in sub-clause (ie) of clause (h) of section 2 shall be issued to any investor or traded on any recognised stock exchange unless such securities have been approved by the Securities and Exchange Board of India.

(2) Every special purpose distinct entity referred to in sub-clause (ie) of clause (h) of section 2 shall—

(a) make an application for specifying, any certificate or instrument under sub-clause (ie) of clause (h) of section 2, as securities, to the Securities and Exchange Board of India, in such form and manner as may be specified by regulations;

(b) file along with an application made under clause (a) the draft of the certificate or instrument which such entity proposes to issue to the investor as securities of the nature referred to in sub-clause (ie) of clause (h) of section 2.

(3) The Securities and Exchange Board of India may, to protect the interest of investors in the securities of the nature referred to in sub-clause (ie) of clause (h) of section 2, specify by regulations,—

(i) the contents of the certificate or instrument to be filed under clause (b) of sub-section (2) and to be issued as securities of the nature referred to in sub-clause (ie) of clause (h) of section 2, to the investors;

(ii) the manner in which such contents shall be disclosed in the certificate or instrument to be issued as securities of the nature referred to in sub-clause (ie) of clause (h) of section 2.”

Amendment of
section 31.

4. In section 31 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the manner in which at least fifty-one per cent. of equity share capital of a recognised stock exchange is held within twelve months from the date of publication of the order under sub-section (7) of section 4B by the public other than the shareholders having trading rights under sub-section (8) of that section;

(b) the form and manner in which an application shall be made under clause (a) of sub-section (2) of section 17A;

(c) the contents of the certificate or instrument under clause (i) of sub-section (3) of section 17A;

(d) the manner in which such contents shall be disclosed in the certificate or instrument under clause (ii) of sub-section (3) of section 17A.”

STATEMENT OF OBJECTS AND REASONS

During the Budget Session of Parliament in the current year 2005, it was proposed to amend the definition of "securities" in the Securities Contracts (Regulation) Act, 1956 (the SCR Act) so as to provide a legal framework for trading of securitised debt including mortgage backed debt.

2. Securitisation is a form of financing involving pooling of financial assets and the issuance of securities that are re-paid from the cash flows generated by the assets. This is generally accomplished by actual sale of the assets to a bankruptcy remote vehicle, that is, a special purpose vehicle, which finances the purchase through the issuance of bonds. These bonds are backed by future cash flows of the asset pool. The most common assets for securitisation are mortgages, credit cards, auto and consumer loans, student loans, corporate debt, export receivables, off-shore remittances, etc.

3. Besides other advantages, securitisation (a) allows banks and financial institutions to keep these loans off their balance-sheet, thus reducing the need for additional capital; (b) provides the banks and financial institutions with alternative forms of funding risk transfer, a new investor base, potential capital relief and capital market development; (c) can reduce lending concentration, improve liquidity and improve access to alternate sources of funding for banks and financial institutions; (d) facilitates attainment of funding at lower cost as a result of isolating the assets from potential bankruptcy risk of the originator; (e) facilitates better matching of assets and liabilities and the development of the long-term debt market; (f) provides diversified pools of uniform assets; and (g) has the advantage of converting non-liquid loans or assets which cannot be easily sold to third party investors into liquid assets or marketable securities. Lower funding costs are also a result of movement of investments from less efficient debt markets to more efficient capital markets through the process of securitisation.

4. In India, the securitisation market remains underdeveloped. Although two major legislative initiatives, namely, (a) the amendment to the National Housing Bank Act, 1987 (NHB Act) in the year 2000; and (b) the enactment of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), have been taken, the market has not picked up because of the absence of the facility of trading on stock exchanges. The potential buyers get discouraged by the possibility of having to hold the certificate or instrument in respect of securitisation transactions till maturity. This, in turn, restricts the growth of business of housing finance companies and banks.

5. The securitisation transactions under the NHB Act are not covered under the definition of "securities" under the SCR Act. As such, trading in certificates or instruments relating to such transactions cannot take place on stock exchanges and buyers of such securitised financial certificates or instruments are left with few exit options. Under the SARFAESI Act, while "security receipts" have been covered under the definition of "securities", the provisions of the said Act restrict sale and purchase only amongst qualified institutional buyers. Besides, the "security receipts" under the SARFAESI Act can be issued only by a securitisation company or a reconstruction company registered with the Reserve Bank of India. This obviously limits the interest in such receipts and the market has not taken off at all.

6. Keeping in view the potential of the securities market for the certificates or instruments under securitisation transactions, international trends and consultations held with major institutional participants and market experts, it has been decided to amend the SCR Act, *inter alia*,—

(i) to include securitisation certificate or instrument under the definition of "securities" and to insert for the said purpose, a new sub-clause (ie) in clause (h) of section 2 of the SCR Act, 1956;

(ii) to provide for obtaining approval from the Securities and Exchange Board of India for issue of the proposed certificate or instrument and procedure therefor and to insert for the said purpose a new section 17A in the SCR Act, 1956; and

(iii) to provide for the manner in which contents of such certificate or instrument, being the “securities” and acknowledging beneficial interest shall be disclosed.

7. The Bill seeks to achieve the above objectives.

NEW DELHI;

P. CHIDAMBARAM.

The 7th December, 2005.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 4 of the Bill proposes to amend section 31 of the Securities Contracts (Regulation) Act, 1956 so as to confer power upon the Securities and Exchange Board of India to make regulations on the matters such as specifying the form and manner in which an application shall be made under clause (a) of sub-section (2) of section 17A; specifying the contents of the certificate or instrument under clause (i) of sub-section (3) of section 17A and the manner in which such contents shall be disclosed in the certificate or instrument under clause (ii) of sub-section (3) of section 17A.

2. The regulations made by the Securities and Exchange Board of India shall be laid, as soon as may be, after they are made, before each House of Parliament.

3. The matters in respect of which regulations may be made are generally matters of procedure and administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

P.D.T. ACHARY,
Secretary-General.

Definitions.

Power of
Securities and
Exchange
Board of India
to make
regulations.

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*	*	*	*	*
31. (1)	*	*	*	*
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